4-7-2023

# Brief of Law Professors as Amici Curiae in Support of Plaintiff-Appellee

Evan J. Criddle

**[ORAL ARGUMENT SCHEDULED ON May 8, 2023]**
**No. 22-7163**

# In the United States Court of Appeals for the District of Columbia Circuit

DISTRICT OF COLUMBIA,
*Plaintiff-Appellee*,

v.

EXXON MOBIL CORPORATION; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; BP P.L.C.; BP AMERICA INC.; CHEVRON CORPORATION; CHEVRON U.S.A. INC.,
*Defendants-Appellants.*

On Appeal from the United States District Court
for the District of Columbia
Case No. 1:20-cv-01932-TJK (The Hon. Timothy J. Kelly)

## BRIEF OF LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

As required by Circuit Rules 27(a)(4) and 28(a)(1), counsel for Amici Curiae Law Professors provide the following information:

### I. Parties and Amici Appearing Below

The parties who appeared before the U.S. District Court were the District of Columbia, *Plaintiff-Appellee*, and Exxon Mobil Corporation; ExxonMobil Oil Corporation; Royal Dutch Shell PLC; Shell Oil Company, BP P.L.C.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc, *Defendants-Appellants.*

### II. Parties and Amici Appearing in this Court

The parties appearing in this Court are District of Columbia, *Plaintiff-Appellee*, and Exxon Mobil Corporation; ExxonMobil Oil Corporation; Royal Dutch Shell PLC; Shell Oil Company, BP P.L.C.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc, *Defendants-Appellants.*

### III. Rulings under Review

The rulings under review in this case are the November 12, 2022 Memorandum Opinion and Order of the U.S. District Court for the District of Columbia (Kelly, T.) granting the plaintiff's motion to remand this action to the Superior Court of the District of Columbia.

### IV. Related Cases

There are no related cases.

Respectfully submitted,

*/s/ Deepak Gupta*
Deepak Gupta
*Counsel for Amici Curiae*

April 7, 2023

## CORPORATE DISCLOSURE STATEMENT

*Amici* are individual law professors. They submit this brief in their personal capacity, and do not speak for any universities with which they have affiliation. They have no parent corporations, and no publicly held corporation owns any portion of any of them.

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## INTERESTS OF THE *AMICI CURIAE*

*Amici curiae* are scholars of foreign relations law and federal courts:

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The *amici* submit this brief because they have specific expertise with the intersection of foreign relations law and the authority of federal courts, and an interest in legal interpretation and application of those principles by federal courts.[1]

## SUMMARY OF ARGUMENT

The plaintiff (the District of Columbia) filed a lawsuit in state court alleging violations of state law related to corporate deception and consumer protection. The defendants (fossil-fuel companies) removed to federal court and asserted that this case deserves special treatment because they allege that it interferes with the foreign relations of the United States. On that basis, they claim that the complaint actually asserts claims under federal common law and that federal jurisdiction should attach.

The premises of these arguments are mistaken. A case about corporate deception and consumer protection does not interfere with the foreign relations of the United States just because the defendants happen to be engaged in the international fossil-fuel business. Otherwise, any defendant engaged in international business would be able to invoke "foreign relations" in any case against it. Indeed,

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The law schools employing *amici* provide financial support for activities related to faculty members' research and scholarship, which helped defray the costs in preparing and submitting this brief. Otherwise, no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief. Titles and institutional affiliations are for identification purposes only.

then-former U.S. government officials have explained how, if anything, suits like this one are *consistent* with U.S. foreign relations.

Moreover, the supposed presence of some foreign-relations interest in this case does not answer any relevant legal question. First, federal common law is only available in "few and restricted" areas when "necessary to protect uniquely federal interests." The mere invocation of foreign relations does not pass this test. Federal courts routinely apply state law (and not federal common law) in cases implicating far greater foreign-relations interests: cases against foreign sovereigns; cases arising out of foreign military operations; and cases implicating state secrets, among others. Federal courts also routinely apply state law (and not federal common law) in cases implicating interstate and international conduct.

Second, federal jurisdiction is limited to those areas authorized by the Constitution and Congress. The mere invocation of foreign relations does not suffice to create a federal question, either directly or under *Grable*. Nor should it. Congress has carefully modulated federal jurisdiction over cases implicating foreign relations for more than 200 years, from the First Judiciary Act of 1789 to the Justice Against Sponsors of Terrorism Act of 2016. This case does not fall within any congressionally authorized basis of jurisdiction. Federal courts should be wary about expanding jurisdiction under the guise of foreign relations when Congress has so carefully calibrated jurisdiction to reflect its considered view of these interests.

In sum, this Court should affirm the decision of the district court because this case does not implicate foreign relations in any legally meaningful way.

## ARGUMENT

### I. This case does not interfere with the foreign relations of the United States.

This is a case about corporate deception and consumer protection. Corporate-deception and consumer protection cases do not implicate the foreign relations of the United States. This is true even if the corporate deception is in furtherance of an international business—otherwise every corporation doing international business would be able to invoke "foreign relations" in every case.

For these reasons, this Court should reject the appellants' arguments that the plaintiff-appellee's state law claims must be deemed to arise under federal common law grounded in foreign relations. Importantly, though, if this Court disagrees and concludes that this case may somehow interfere with foreign relations, that conclusion does not itself warrant removal on the basis of federal common law. To the contrary, any such finding only begins the inquiry whether federal common law and federal jurisdiction are appropriate.

#### A. This case is about corporate deception.

The defendants repeatedly refer to this as a case about nuisance and trespass, seeming to imply that it should be treated as a case seeking to regulate pollution. It is true that the complaint pleaded nuisance and trespass (among other causes of

action), but labelling a claim "nuisance" does not mean that it seeks to regulate pollution. In particular, as the appellee argues in more detail, the central bases for relief asserted in the complaint are about corporate deception. *See Standard Fire Ins. Co. v. Knowles,* 568 U.S. 588, 595 (2013) ("[P]laintiffs . . . are the masters of their complaints.").

This case, therefore, is best understood as being about *illegal* activity in the form of corporate deception. This stands in contrast to the Second Circuit's decision in *City of New York*—cited numerous times by the appellants—which was predicated on that court's conclusion that the suit was grounded in the plaintiffs' attempts to regulate otherwise *legal* activity. *City of New York v. Chevron Corp.*, 993 F.3d 81, 86 (2d Cir. 2021) ("The City of New York . . . instituted a state-law tort suit against five oil companies to recover damages caused by those companies' admittedly *legal* commercial conduct in producing and selling fossil fuels around the world.") (emphasis added). Again, this is not such a case.

### B. Claims of corporate deception do not interfere with the foreign relations of the United States.

Because this is a case about corporate deception, there is no basis to find that this case interferes with the foreign relations of the United States. The appellants speculate about how this case interferes with foreign policy, *see* Appellants' Br. at 14–22, 25–26, 30–32, but that speculation is unavailing. The appellants argue that this case interferes with foreign relations because it relates to the sale of oil and gas

abroad. *Id.* at 25–26. This claim proves too much. It simply cannot be true that any claim of any kind against a fossil fuel company automatically qualifies for federal jurisdiction as a federal common law claim. Innumerable cases against fossil fuel defendants are litigated in state courts under state law, and that is as it should be.

Briefs submitted in similar cases by thirteen then-former U.S. government officials illustrate why this case does not interfere with foreign relations. *See* Brief of Former U.S. Government Officials as *Amici Curiae* supporting the appellee and affirmance of the district court's decision, *Rhode Island v. Shell*, 2019 WL 7565366 (1st Cir. Dec. 23, 2019) (on behalf of *amici curiae* Susan Biniaz, Antony Blinken, Carol M. Browner, William J. Burns, Stuart E. Eizenstat, Avril D. Haines, John F. Kerry, Gina McCarthy, Jonathan Pershing, John Podesta, Susan E. Rice, Wendy R. Sherman, and Todd D. Stern) ("Rhode Island Brief"); Brief of Former U.S. Government Officials as *Amici Curiae* in support of the plaintiff's opposition to the defendants' motion to dismiss, *Mayor & City Council of Baltimore v. B.P. P.L.C.*, No. 24-C-18-004219 (Cir. Ct. Baltimore City, April 7, 2020) (on behalf of same officials) ("Baltimore Brief").

The then-former officials explained that it would be inappropriate to allow claims of foreign relations to undermine corporate liability regimes. As they wrote: "U.S. foreign policy does not immunize corporations who deceive consumers regarding the effects of their products. . . . [N]o aspect of U.S. foreign policy seeks to

exonerate companies for knowingly misleading consumers about the dangers of their products." Baltimore Brief at 12–13.[2]

Indeed, the then-former officials explained that these corporate-deception suits, if anything, support U.S. foreign-relations interests. "In *amici*'s experience, any diplomatic backlash against the United States in recent years has been caused not by state court adjudication of civil liability for corporate deception, but rather by the [prior] administration's efforts to withdraw from the Paris Agreement. Far from interfering with diplomacy, prudent adjudication of claims of corporate liability for deception might even enhance U.S. diplomatic efforts by reinforcing U.S. credibility with respect to the climate problem." Baltimore Brief at 16–17 (internal footnotes omitted). *See also* Rhode Island Brief, 2019 WL 7565366 at 5 ("[S]uch suits are *consistent* with both U.S. foreign policy and the emerging worldwide consensus that legal action is needed on climate change.").

For these reasons, this Court should conclude that this case does not interfere with the foreign relations of the United States, and, therefore, that this case is devoid of the defendants' asserted basis for the development of federal common law.

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[2] This statement helps further distinguish the Second Circuit's decision in *City of New York*. As noted above, that decision was based on the court's conclusion that the plaintiffs were seeking to regulate lawful activity. Hoboken alleges illegal activity, and again, "no aspect of U.S. foreign policy seeks to exonerate companies for knowingly misleading consumers about the dangers of their products." *See* Baltimore Brief at 12–13.

### C. Even if this Court concluded that this case interferes with foreign relations, that conclusion would not answer any relevant legal question.

Whether this case affects the foreign relations of the United States is more than simply an abstract question. The defendants invoke foreign relations in the context of federal common law and federal jurisdiction. Appellants' Br. 14–22. Each of those areas have their own legal tests, and none of those tests provides that a defendant showing a "foreign relations interest" automatically qualifies for federal common law or federal jurisdiction. *See infra* sections II & III. Even in the main case on which the appellants rely, the Second Circuit acknowledged that, "the mere existence of a federal interest does not intrinsically call for a corresponding federal rule." *City of New York*, 993 F.3d at 90.

So, while the lack of a foreign-relations interest defeats the defendants' arguments that rely on that interest, even the hypothetical existence of a foreign-relations interest would not necessarily make those arguments succeed. Even if this Court concluded that the foreign relations of the United States would be affected by this suit, this Court would still proceed to the next steps in the relevant legal analyses. And as we show below, the appellants would also fail at other steps in those analyses.

## II. Any foreign-relations interests raised in this case do not authorize this Court to create federal common law.

Even if this Court believes that the claims in this case interfere with foreign relations, such interference would not automatically justify the creation of federal

common law. The appellants' arguments on this point, Appellants' Br. at 14–22, fail to grapple with a key aspect of the analysis: federal courts' power to make federal common law is limited, and the presence of foreign relations interests does not necessarily require federal common law be applied.

### A. Federal courts' ability to make federal common law is limited.

Federal common law is, in many ways, a last resort. *Erie Railroad Co. v. Tompkins* held that "[t]here is no federal general common law." 304 U.S. 64, 78 (1938). Federal common law in specialized areas survived *Erie*'s admonition, but it has done so only in "few and restricted" instances. *Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963). Since *Erie*, the Supreme Court and the lower federal courts have been cautious in expanding federal common law. As the Supreme Court explained, "before federal judges may claim a new area for common lawmaking, strict conditions must be satisfied." *Rodriguez v. F.D.I.C.*, 140 S.Ct. 713, 717 (2020); *see also United States v. Kimbell Foods*, 440 U.S. 715 (1979); *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943).

Federal common law is limited for several reasons. One is that it implicates the separation of powers at the national level. As the Supreme Court recently emphasized, "[j]udicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the States." *Rodriguez*, 140 S.Ct. at 717. Another reason for limiting federal common

lawmaking is that it implicates federalism, because federal common law preempts state law. *See Atherton v. F.D.I.C.*, 519 U.S. 213, 218 (1997) ("Whether latent federal power should be exercised to displace state law is primarily a decision for Congress, not the federal courts.") (internal quotation marks omitted); *see also Boyle v. United Techs. Corp.*, 487 U.S. 500, 517 (1988) (Brennan, J., dissenting) ("*Erie* was deeply rooted in notions of federalism, and is most seriously implicated when, as here, federal judges displace the state law that would ordinarily govern with their own rules of federal common law."). So, the constitutional balance of powers among co-equal branches of the federal government *and* the balance between the federal government and the states both caution against federal judicial lawmaking of the sort appellants demand in this case.

### B. The mere presence of foreign-relations interests does not automatically justify federal common law.

Although the Supreme Court has occasionally applied federal common law in cases implicating foreign relations, it has never held that cases implicating foreign relations are necessarily governed by federal common law. This is because the legal test for the appropriateness of federal common law does not turn on the presence of foreign relations. The question, instead, is whether "a federal rule of decision is 'necessary to protect uniquely federal interests.'" *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964)). Appellants ask this Court to treat the presence of foreign relations and the

need for federal common law as coextensive. But the Supreme Court and other federal courts have demonstrated across countless substantive areas of law that the presence of foreign-relations interests—and, often greater than the appellants' framing of the interests in this case—is not a sufficient basis to displace state law and apply federal common law.

First, cases against foreign sovereigns do not require federal common law. Suits against foreign sovereigns are addressed by the Foreign Sovereign Immunities Act (FSIA). Surely cases against foreign sovereigns may implicate foreign relations, and yet the substantive law applied in FSIA cases is typically state law. *See* Wright & Miller, 14A Fed. Prac. & Proc. Juris. § 3662 (4th ed.); *see, e.g.*, *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27 (2015); *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993). Congress commanded as much when, in 28 U.S.C. § 1606, it provided that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." *Id.*; *see also First City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n.11 (1983) ("[W]here state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances."). For this reason, some courts have referred to the FSIA as a "'pass-through' to state law principles." *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12 (2d Cir. 1996); *Owens v. Republic of Sudan*, 864 F.3d 751, 763 (D.C. Cir. 2017). Not only does the FSIA show that state law sometimes applies in

cases implicating foreign relations, but it also shows that Congress *condones* the application of state law in these cases.

Second, the Supreme Court also has indicated that state law may apply to disputes arising out of foreign military operations. For example, in *Day & Zimmermann v. Challoner*, 423 U.S. 3 (1975), the plaintiffs sued the manufacturer of a howitzer round for death and personal injury resulting from its premature explosion during U.S. military operations in Cambodia. The foreign relations concerns raised by a suit arising out of U.S. military operations in a foreign conflict are unambiguous. Yet, not only did the Court call for the application of forum-state choice of law, but it did so in a short *per curiam* reversal. *Id.* at 4 ("A federal court in a diversity case is not free to engraft onto those state rules exceptions or modifications which may commend themselves to the federal court, but which have not commended themselves to the State in which the federal court sits."). Similarly, the Second Circuit held in the *Agent Orange* litigation that federal common law did not provide a right of action arising out of overseas military operations. *See In re "Agent Orange" Prod. Liab. Litig.*, 635 F.2d 987 (2d Cir. 1980).

Third, state secrets cases are yet another example of cases to which federal common law does not automatically apply. The state secrets privilege is available when there is "a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged."

*See United States v. Reynolds*, 345 U.S. 1, 10 (1953). The privilege is federal law, but it does not require that the claims against which the privilege is sought be preempted by federal common law. Instead, the privilege may be invoked in cases where the claims arise under state law. *See*, *e.g.*, *Fitzgerald v. Penthouse Int'l., Ltd.*, 776 F.2d 1236 (4th Cir. 1985); *Zuckerbraun v. Gen. Dynamics Corp.*, 935 F.2d 544 (2d. Cir. 1991); *In re Agent Orange Prod. Liab. Litig.*, 97 F.R.D. 427 (E.D.N.Y. 1983).

In sum, even if this Court finds that this case implicates the foreign relations of the United States, that finding does not authorize this Court to preempt state law with federal common law.

### C. Any purported connection to "interstate and international conduct" does not justify federal common law.

Appellants' vague invocations of "interstate and international conduct," *see*, *e.g.*, Appellants' Br. 13–22, also cannot justify federal common law in this case. Casual references to "interstate" and "international" play no role in the legal tests at issue. First, as noted above, the mere fact that the defendants are engaged in interstate or international business cannot be a basis for the application of federal common law. Otherwise, every case against a large corporation would require the application of federal common law. But second, even if a case addresses, in some way, conduct that happens outside of the state or country, that does not mean that federal common law must apply. Many of the cases cited in the previous section involve overseas conduct, and that conduct did not automatically translate into the application of federal

common law. *See*, *e.g.*, *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27 (2015); *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993); *Day & Zimmermann v. Challoner*, 423 U.S. 3 (1975), *In re "Agent Orange" Prod. Liab. Litig.*, 635 F.2d 987 (2d Cir. 1980). The test, again, is whether federal common law is necessary to protect uniquely federal interests, not simply a purported connection to international conduct. Appellants' briefing offers no reason to believe they can meet this high standard.

## III. Any foreign-relations interests raised in this case do not authorize this Court to assert federal jurisdiction.

Federal jurisdiction is limited by the Constitution and by Congress. The potential presence of a federal defense (such as preemption) or an alleged free-floating federal interest (such as in foreign relations) cannot support federal jurisdiction. And in this case, where the appellants rely on vague foreign-relations interests to assert federal jurisdiction, the Court should reject the appellants' proposed expansion unsanctioned by federal law.

### A. This Court should heed the Supreme Court's repeated insistence that jurisdiction and merits are separate inquiries.

Federal courts are courts of limited subject-matter jurisdiction. *See*, *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The subject-matter jurisdiction of federal courts is limited first by Article III of the Constitution, and then by the bases of subject matter jurisdiction authorized by Congress. U.S. Const. art. III, §§ 1–2; 28 U.S.C. §§ 1330–1369. Federal courts have a special duty to ensure

that cases are within their subject-matter jurisdiction. *See Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908). Indeed, federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)). This case does not fall within authorized federal court jurisdiction.

The Supreme Court has been careful to delineate the boundaries of "jurisdictional" determinations because of subject matter jurisdiction's important role in our legal system. *See*, *e.g.*, *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010) (expressing concern with "drive-by jurisdictional rulings" and drawing the line between jurisdictional conditions and claim-processing rules). Federal courts cabin jurisdictional determinations in part by applying the well-pleaded complaint rule. *See*, *e.g.*, *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908). Federal question jurisdiction may not be grounded in an anticipated defense but instead must appear on the face of the complaint. *See id.*; *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987); *City of Oakland v. BP PLC*, 969 F.3d 895, 903–08 (9th Cir. 2020) (applying this logic to find no federal question jurisdiction in a climate suit).

This approach to federal question jurisdiction differentiates it from questions of federal preemption. When a defendant argues that federal law preempts a state law claim, typically they do so as a defense. *See generally* Hart and Wechsler's The

Federal Courts And The Federal System at 677–86 (7th ed. 2015). Defensive preemption, under the well-pleaded complaint rule, is not a basis for federal subject matter jurisdiction. According to Wright & Miller:

> If the plaintiff chooses to assert a claim based solely on state law, and that state-law claim continues to exist, preemption can be only a defense. Ordinary preemption will not permit removal. Even if the defense of federal preemption is anticipated by the plaintiff and negated in the complaint, the complaint would not be well-pleaded and thus, under settled principles . . . , would not create federal jurisdiction and permit removal.

Wright & Miller, 14C Fed. Prac. & Proc. Juris. § 3722.2 (Rev. 4th ed.) (internal footnotes omitted).

The Second Circuit in *City of New York* agreed, emphasizing that its decision about preemption grounded in foreign relations was not the same as a ruling on jurisdiction or removal. 993 F.3d at 94 ("Here, the City filed suit in federal court in the first instance. We are thus free to consider the Producers' preemption defense on its own terms, not under the heightened standard unique to the removability inquiry. So even if this fleet of cases is correct that federal preemption does not give rise to a federal question for purposes of removal, their reasoning does not conflict with our holding."). The appellants can (and likely will) raise preemption as a defense to the City's complaint on remand, but the mere existence of that defense cannot transform the City's state law claims into federal common law claims to ground federal question jurisdiction.

All of this is to say that this Court should be careful to distinguish between foreign relations arguments about preemption (*see supra* Part II) and those about jurisdiction (*see infra* Part III.B).

### B. The mere presence of foreign-relations interests does not automatically justify federal jurisdiction.

Appellants' attempts to connect purported foreign-relations interests to federal jurisdiction fail.

First, as described above, this case does not interfere with any foreign-relations interests. *See supra* Part I. The inquiry thus should end there.

Second, if this Court concludes that foreign relations are at stake, that does not mean federal jurisdiction is appropriate. Federal jurisdiction does not obtain simply because a party invokes the phrase "foreign relations," nor should it. The same is true for a mere mention of the "First Amendment" or any other federal enactment. Instead, jurisdiction must be grounded in the existing jurisdictional statutes. This case does not fall within the text of any of those statutes, and courts should be wary of expanding their jurisdiction beyond what Congress intended.

This case is a particularly weak case for judicially expanded jurisdiction. Congress has calibrated the scope of federal jurisdiction in reference to foreign relations for more than two centuries. The Judiciary Act of 1789 included various grants of jurisdiction implicating foreign relations: disputes between U.S. and foreign citizens; admiralty and maritime claims; and alien tort claims. 28 U.S.C. §§ 1332(a)(2),

1333, 1350. In 1948, Congress added jurisdiction over civil actions against consular officials. 28 U.S.C. § 1351. In 1970, to implement its obligations under the New York Convention, Congress authorized removal from state court for claims related to international arbitration. 9 U.S.C. § 205. In 1976, Congress adopted the Foreign Sovereign Immunities Act, providing for federal jurisdiction over claims against foreign sovereigns. 28 U.S.C. § 1330. In 1994, Congress expanded jurisdiction over certain counterclaims related to international trade. 28 U.S.C. § 1368. In 2008, Congress authorized federal jurisdiction for certain claims against foreign sovereigns designated as state sponsors of terrorism. 28 U.S.C. § 1605A. In 2010, Congress authorized removal of state-court actions to enforce foreign judgments for defamation based on minimal diversity and without regard to the amount in controversy. 28 U.S.C. § 4103. And in 2016, Congress further expanded federal jurisdiction over claims against foreign sovereigns with the Justice Against Sponsors of Terrorism Act (JASTA). 28 U.S.C. § 1605B.

This laundry list of statutes demonstrates that Congress has attentively managed federal jurisdiction over cases implicating foreign relations. Courts should generally be cautious about expanding jurisdiction beyond Congress's command. But courts should be especially cautious where Congress has carefully calibrated jurisdiction—as here, related to foreign relations—and did not include any basis of jurisdiction applicable to a case. *Cf. Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018)

(explaining that Congress's considered judgment reflected in the Torture Victims Protection Act counseled against judicial lawmaking with respect to the Alien Tort Statute). If Congress wants cases such as this one to be within federal jurisdiction, it knows exactly how to achieve that goal. Modifying federal jurisdiction in light of global climate change would be a task best suited for Congress, not the federal courts.

## CONCLUSION

For the foregoing reasons, the *amici curiae* respectfully urge this Court to affirm the judgment of the district court.

Respectfully submitted,

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April 7, 2023

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief contains 4,197 words, excluding exempted parts. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in proportionally spaced typeface in 14 point Baskerville font.

*/s/ Deepak Gupta*
Deepak Gupta

## CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

*/s/ Deepak Gupta*
Deepak Gupta